

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NCR CORPORATION,)
)
Plaintiff,)
)
v.) C.A. No. 11-481-NLH-AMD
)
BB 2009 TRUST,) REDACTED - PUBLIC VERSION
)
Defendant.)

DECLARATION OF PAUL S. HESSLER

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Rodger D. Smith II (#3778)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200

Attorneys for BB 2009 Trust

OF COUNSEL:

Paul S. Hessler
Robert H. Bell
LINKLATERS LLP
1345 Avenue of the Americas
New York, NY 10105
(212) 903-9000

June 21, 2011 - Original Filing Date
June 28, 2011 - Redacted Filing Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NCR Corporation,

Plaintiff,

C.A. No. 11-481-NLH-AMD

v.

BB 2009 Trust,

Defendant.

DECLARATION OF
PAUL S. HESSLER

PAUL S. HESSLER, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a partner of Linklaters LLP, attorneys for BB 2009 Trust (the “Trust”). I submit this Declaration in support of the Trust’s motion to dismiss the Complaint for failure to join a necessary and indispensable party. Unless expressly noted, I have personal knowledge of the matters set forth in this Declaration.
2. On May 21, 2011, NCR Corporation (“NCR”) filed a Complaint in this Court against the Trust for a declaratory judgment seeking an adjudication of NCR’s rights under a trademark license agreement. Attached hereto as Exhibit A is a true and correct copy of the Complaint.
3. On January 23, 2009, Blockbuster Inc. (“Blockbuster”) and NCR entered into an Alliance Agreement, which called for Blockbuster to convey to a trust certain trademarks for the purpose, among others, of licensing such trademarks to NCR. Attached hereto as Exhibit B is a true and correct copy of the Alliance Agreement.

4. The Trust, a Delaware statutory trust created pursuant to a Trust Agreement, dated February 27, 2009 (the “Trust Agreement”), by and among Blockbuster, as Trustor, NCR and Wilmington Trust Company, as Trustee, was formed for this purpose. Attached hereto as Exhibit C is a true and correct copy of the Trust Agreement.

5. On March 2, 2009, NCR and the Trust entered into a Trademark Usage License (the “License”). Attached hereto as Exhibit D is a true and correct copy of the License.

6. Since 2010, Blockbuster and its debtor affiliates have been debtors and debtors in possession in the jointly administered Chapter 11 cases titled *In re Blockbuster Inc., et al.*, Case No. 10-14997, currently pending in the U.S. Bankruptcy Court for the Southern District of New York (the “Chapter 11 Cases”).

7. As permitted by applicable law, Blockbuster transferred (the “Transfer”) substantially all of Blockbuster’s assets to Blockbuster L.L.C. (“New Blockbuster”), as assignee of DISH Network Corporation (“DISH”), pursuant to the Amended and Restated Purchase Agreement, dated April 20, 2011, between Blockbuster and DISH (the “Purchase Agreement”). Attached hereto as Exhibit E is a true and correct copy of the Purchase Agreement.

8. The bankruptcy court expressly approved the Transfer in orders issued in connection with the Chapter 11 Cases on April 14, 2011 and April 26, 2011. New Blockbuster now operates as a wholly-owned, indirect subsidiary of DISH. Attached hereto as Exhibits F and G are true and correct copies of the orders approving the Transfer.

9. The Trust Agreement has not been assumed or assigned, and Blockbuster remains a party to the Trust Agreement.

10. On May 11, 2011, Blockbuster provided notice to NCR (the “Blockbuster Notice Letter”) that, pursuant to Section 5(e)(5)(a) of the Alliance Agreement, Blockbuster had

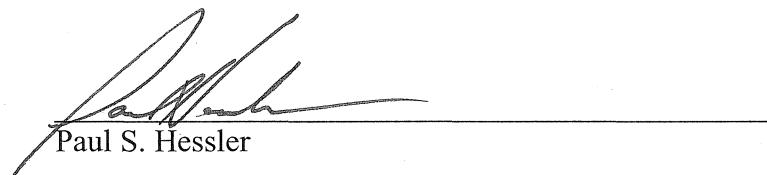
determined to discontinue the use of the Licensed Marks and directed NCR to discontinue its use of the Licensed Marks. Attached hereto as Exhibit H is a true and correct copy of the Blockbuster Notice Letter.

11. On May 25, 2011, Blockbuster and New Blockbuster delivered a letter to the Trustee (the "Joint Instruction Letter"), which, pursuant to the terms of the Trust, instructed the Trustee to execute and deliver to NCR a notice withdrawing approval and terminating the license. Attached hereto as Exhibit I is a true and correct copy of the Joint Instruction Letter.

12. On May 26, 2011, the Trustee provided NCR with written notice of withdrawal of approval of NCR's usage of the Licensed Marks and terminated the License (the "Termination Notice"). Attached hereto as Exhibit J is a true and correct copy of the Termination Notice.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 21, 2011



Paul S. Hessler

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2011, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to:

Melanie K. Sharp
Erika R. Caesar
Young, Conaway, Stargatt & Taylor LLP

I further certify that I caused copies of the foregoing document to be served on June 28, 2011, upon the following in the manner indicated:

Melanie K. Sharp
Erika R. Caesar
Young, Conaway, Stargatt & Taylor LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

VIA ELECTRONIC MAIL

James E. Brandt
LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022-4834

VIA ELECTRONIC MAIL

Maximilian A. Grant
Michael David
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

VIA ELECTRONIC MAIL

/s/ Rodger D. Smith II

Rodger D. Smith II (#3778)